

**CONTRACT TO PROVIDE WELLNESS PROGRAM MANAGEMENT SERVICES FOR THE KANSAS STATE
EMPLOYEE HEALTH SEHP**

THIS CONTRACT is made and entered into this _____ day of _____, 2013, by and between the Kansas State Employee Health Care Commission (hereinafter referred to as "HCC") and _____ (hereinafter referred to as "Contractor").

WHEREAS, HCC wishes to develop and implement a wellness campaign designed to engage the varied membership of the Kansas State Employee Health Plan (hereinafter referred to a "SEHP"); and

WHEREAS, Contractor is a healthcare company holding itself out as having expertise in wellness programs and campaigns and desires to provide its services and expertise to HCC; and

WHEREAS, it has been determined by HCC that the best interest of HCC will be served by awarding a contract to Contractor to provide these services.

THEREFORE, in consideration of the mutual agreements contained below, HCC and Contractor agree as follows:

1. **General:** Subject to the terms and conditions of this Contract, the HCC hereby accepts the offer of Contractor as expressed by Contractor's Response to Request for Proposal # _____ technical proposal and Contractor's Response to Request for Proposal # _____ pricing as set forth in Exhibit A, submitted to HCC in response to Request for Proposal # _____ (hereinafter referred to as "RFP").
2. **Deliverables:** It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to furnish develop and implement a wellness campaign designed to engage the varied membership of the Kansas State Employee Health Plan as described within the Contractor's Response to RFP# _____. This may include but is not limited to providing the following: health risk appraisals, health screenings, health coaching, disease management and other services for the HCC for the period of three (3) years from the date of this Contract at the price or prices contained in Contractor's Cost Proposal which is hereby attached as Exhibit A. HCC agrees to pay on delivery of the services the amount billed by Contractor to HCC in accordance of the Kansas Prompt Pay Act. Payment will be made as soon after receipt of the invoice as possible in accordance with the Kansas Prompt Payment Act and state law. Pricing for services shall be set forth in Exhibit A, and Contractor shall submit invoices monthly.
 - a. Failure of Contractor to furnish the services in accordance with the bid specifications incorporated into this Contract by reference, or failure of Contractor to deliver the services in accordance with any time schedules prescribed in this Contract, or any documents incorporated by reference into this Contract, shall result in forfeiture of any

performance bond of Contractor and/or immediate termination of this Contract at the option of HCC.

3. **Performance Standards.** Service performance standards set forth in the RFP establish expectations regarding certain areas of the Contract between Contractor and the HCC. These performance standards are designed to assure that all parties involved in providing services know what the standards are and that Contractor will provide guarantees based on these standards. Success in meeting these standards will provide a quality Wellness Plan to claimants. Contractor accepts these standards as agreed upon in **Exhibit B**, attached hereto.
4. **Acceptance of RFP Terms & Conditions:** All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, prices lists, catalogs, or other documents or exceptions as part of Contractor's response will be waived and have no effect either on this Request for Proposal or on any contract that may be awarded through this solicitation. By submitting an executed proposal, the Contractor specifically agrees to the conditions set forth in this paragraph.
5. **Conflict Resolution:** In the event the parties cannot mutually agree to a resolution of any controversies or claims between the parties regarding the provisions of services and completion of deliverables, the HCC, at its sole discretion and judgment, will make the final determination as to whether deliverables have been satisfactorily completed or other services provided in accordance with the Contract.
6. **Advertising:** The Contractor will not use the award of a contract as part of any news release or commercial advertising without the HCC's prior written permission.
7. **Contract Documents:**
 1. The contract consists of the following documents, incorporated herein by reference:
 - a. This RFP, which includes all Exhibits and Attachments; and
 - b. The Addenda to this RFP, if any; and
 - c. The DA146a
 - d. The Business Associate Agreement
 - e. The Contractor's Technical and Cost Proposal(s) including clarifications
 2. In the event of a conflict between or among the terms of the Contract Documents, the term in the Contract Document with the highest precedence will prevail. The Addenda to the RFP (if any), in reverse order of publication, will have the highest precedence, the RFP will have the second highest precedence, and the Contractor's proposal will have the third highest precedence. These documents constitute the entire agreement between the parties and supersede all prior oral or written statements or agreements.

8. **Confidentiality and Access:** Contractor shall not disclose to any other person, firm, or corporation or entity (other than to the HCC) or use for its own benefit, except as provided in this Contract and the Business Associate Agreement, any data, Protected Health Information (hereinafter referred to as "PHI") and/or other confidential information it receives from HCC. Notwithstanding the Business Associate Agreement, such data and information may be disclosed to contract workers, employees, consultants and agents of the Contractor who have a need to know or have access to such data or information in the performance of this Contract and who have executed written agreements with the Contractor obligating them to treat such information in a manner consistent with the terms of this Contract. Contractor shall return any and all data furnished by HCC promptly at the request of HCC in whatever forms it is maintained by Contractor. On the termination of this Contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by HCC, will destroy or render such data or material unreadable. In the event Contractor discloses any of HCC's proprietary and/or personal identifiable information, HCC may immediately terminate the Contract and pursue legal action recourse. The restrictions and obligations contained herein shall continue in perpetuity from the date of this Contract unless HCC provides a written release to Contractor.
9. **Data Ownership:** The Contractor understands and agrees that all data provided by the HCC, or by the HCC's contracted vendors authorized by the HCC is owned by the HCC and will be used by the Contractor solely for the purposes described in this Contract. All data created in any form as part of this Contract will be the property of the HCC and will be available to the HCC at all times. Upon termination of the Contract, all data associated with this Contract will be transferred to and accepted by the HCC prior to final payment to the Contractor. Under no circumstances will the Contractor share the data with any other entity without the HCC's prior written authorization
10. **Copyrights and Ownership of Deliverables:** All deliverable items produced pursuant to this contract are the exclusive property of the HCC. The Contractor will not assert a claim of copyright or other property interest in such deliverables
11. **Termination Right:**
- A. Notwithstanding any other provisions of this Contract, the HCC reserves the right to terminate this Contract at the end of any month by giving thirty (30) days advance notice thereof in writing to Contractor.
 - B. In the event of termination of this Contract, Contractor will, unless the HCC directs and Contractor otherwise agrees:
 - (1) Complete the pricing of all deliverables incurred prior to the effective date of termination and HCC shall pay Contractor for all applicable fees in respect to such deliverables priced.

(2) Release to the HCC, in Contractor's standard format, all records and files relating to deliverables priced under the SEHP health plan pursuant to this Contract.

C. If Contractor uses any patented, trademarked or copyrighted designs, devices, materials or other property, tangible or intangible in connection with its performance of its obligations under this Contract it shall provide for such use in an approved legal manner by making a proper agreement with the patentee or owner of such trademark or copyright and shall defend and hold HCC harmless on any claim relating to such items. Contractor also grants the State of Kansas, and its departments, agencies, affiliates, agents, employees and licensees a non-exclusive, royalty-free, non-revocable perpetual license to use and copy for any reason Contractor's bid and proposal and any other document(s) submitted to the COMMISSION that may be related to this Contract.

12. Independent Contractor: Both Contractor and HCC, in the performance of this Agreement, are and shall be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever except the Contractor's employees shall be deemed agents of the State of Kansas for the purpose of maintaining confidentiality of private or confidential data, software and equipment maintained by HCC.

13. Indemnification: The Contractor will hold and save the state, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this contract. The Contractor represents and warrants that it will make no claim of any kind or nature against the state's agents who are involved in the delivery or processing of Contractor goods to the State. The representation and warranty in the preceding sentence will survive the termination or expiration of this contract.

14. Liability: Subject to the limitations set forth below, Contractor shall assume full responsibility for damage, including mitigation expenses security, or misuse of all State and Contractor property, including any private or confidential data, software and equipment maintained by Contractor and any equipment, supplies, accessories, software or parts furnished by Contractor while such property is in Contractor's care. Contractor shall also assume full responsibility for compliance with the standards for security of privacy of confidential records, data, software, software code, or equipment maintained by the State of Kansas, as set forth in Federal and State statutes which mandate implementation of strict measures to ensure physical and electronic security of the same.

15. **Hold Harmless:** Contractor shall save, hold harmless and indemnify HCC against any and all liability, claims for injury to, or death of any persons and for loss or damage to any property and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of Contractor's performance under the terms of this Contract.
16. **Survival of Promises:** All promises, requirements, terms, conditions, provisions, representation, guarantees, and warranties contained herein will survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
17. **Wavier:** In the event of breach of this Agreement, or any provision hereof, failure of HCC to exercise any of its rights or remedies under the Agreement shall not be construed as a waiver of any such provision of the Agreement breached or as acquiescence in the breach. The remedies herein reserved shall be cumulative and additional to any other remedies at law or in equity.
18. **Legislative Requests:** Contractor will provide support to the HCC in responding to information requests and fiscal notes or impact statements needed by the Legislature. Responses shall be given within two (2) business days.
19. **Audits and Access to Records:** The HCC reserves the right to conduct annual, or more frequently if needed, audits of Contractor's records and files related to the performance or cost of this Contract. The Contractor will make available to the HCC any person, record or file deemed necessary by the HCC to validate either performance or cost. The Legislative Post Audit will have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions. There will be no fee from the Contractor to complete such audits. All third party auditors will enter into a confidentiality agreement reasonably acceptable to Contractor and permitted under the Kansas Open Records Act.
20. **Beneficiaries:** Except as herein specifically provided otherwise, this contract will inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, will be strictly reserved to the HCC and the named Contractor. Nothing contained in this document will give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the HCC and Contractor that any such person or entity, other than the HCC or the Contractor, receiving services or benefits under this contract will be deemed an incidental beneficiary only.
21. **Amendment:** This Contract shall be amended only by the written agreement of the parties. No alteration or variation of the terms and conditions of this Contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

22. **Option to Renew:** HCC shall have the option, by mutual written agreement of HCC and Contractor, to renew this Contract for up to three (3) additional terms, each lasting up to three (3) years.
23. **Joint Drafting:** No provision of this Contract shall be construed more harshly or unfavorably against any party hereto regardless of which party drafted the provision or for whose benefit the provision was included.
24. **Captions:** The captions or heading in this Contract are for reference only and do not define, describe, extend or limit the scope of intent of this Contract.
25. **Validity and Waiver:** The invalidity in whole or in part of any provision of this Contract shall not affect the validity of other provisions. A waiver of a breach of any provision or performance guaranty of this Contract shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision of this Contract. The failure of COMMISSION to enforce at any time or from time to time any provision of this Contract shall not be construed as a waiver thereof.
26. **Force Majeure:** Contractor or HCC shall be excused from performance under this Contract for any period that Contractor HCC is prevented from performing any services, in whole or part, as a result of an act or event not within the reasonable control of the party prevented from performing.
27. **Travel Expenses:** for purposes of this RFP: the Contractor will be responsible for all expenses, including travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract.
28. **Notices.** The notice addresses of the parties are as follows:

HCC:

Director of the State Employee Health Plan
900 SW Jackson Ave., Ste. 900
Topeka, KS 66612

CONTRACTOR:

29. **Employment of Counsel and Resolution of Litigation and Legal Fees:**

A. In the event of litigation involving the services under this Contract (hereinafter referred to as "Litigation") the HCC and Contractor each:

- (1) Reserve the right to select and retain counsel at its own expense to protect its interests;
- (2) Will promptly notify the other party after learning of Litigation;
- (3) Will cooperate fully by providing the other party with all non-confidential relevant information and documents within its control as requested; and
- (4) Will reasonably assist the other party in the defense of Litigation.

B. In the event the HCC, The State of Kansas or any of its staff or Contractor is the sole named defendant in Litigation, such party shall have discretion to defend, settle, compromise or otherwise resolve such Litigation consistent with the terms of this Contract and of the SEHP. Such party shall keep the other party informed of the status of the Litigation and any decision to settle, compromise or otherwise resolve the Litigation shall be communicated to and discussed with the other party prior to any such settlement, compromise or other resolution.

C. In the event the HCC, the State of Kansas or any of its staff and Contractor are codefendants in Litigation, the parties will cooperate fully with each other to defend, settle, compromise or otherwise resolve such Litigation consistent with the terms of this Contract and the SEHP.

D. In the event any entity other than the HCC, the State of Kansas, any of its staff or Contractor, is named as a defendant in Litigation, the HCC can elect to defend, settle, compromise or otherwise resolve such Litigation with respect to those other entities consistent with the terms of this Contract and of the SEHP.

E. The provisions of this section will survive termination of this Contract.

30. Disputes: Should any dispute arise with respect to this Agreement, upon notice by either party, both agree to act immediately to resolve such dispute. The Parties agree that the existence of a dispute notwithstanding, Parties shall continue, without delay, to carry out all of their responsibilities under the Agreement on all non-disputed work.

31. Expiration: Notwithstanding Section 21 of this Contract, this Contract shall expire at 11:59 C.S.T. June 30, 2015.

32. SIGNATURES. Signatures herein shall serve to bond the parties to this Contract. The parties represent and warrant that they have read and thoroughly understand the terms and conditions and they are represented by counsel and the terms and conditions of this RFP and Contract have been fully explained to them by counsel.

This Contract shall be binding on any person or entity that is a successor or purchaser of Contractor.

CONTRACTOR

By: _____
Date

KANSAS STATE EMPLOYEES HEALTH CARE COMMISSION

By: _____
Date